

Internal Revenue Service

199951050
Department of the Treasury

Washington, DC 20224

U/L: 9999.98-00

Contact Person:

Telephone Number

In Reference to:

OP: E: EP: T: 3

Date:

SEP 30 1999

Legend:

Entity A	=
Entity B	=
Entity C	=
Entity D	=
Entity E	=
Entity F	=
Entity G	=
Entity H	=
Entity I	=
Entity J	=
Church K	=
Entity L	=
Division S	=
Pension	=
Committee A	=
Plan X	=
Plan Y	=
Plan Z	=
Plan W	=
Welfare Plans	=

State N -

Dear

On January 5, 1998, as supplemented by correspondence dated August 27, 1998, January 14, 1999, and March 12 and 29, 1999, April 14, 1999, June 11, 1999, August 11 and August 30, 1999, and September 16, 1999, your authorized representative requested a ruling on your behalf that the employee benefit plans maintained by Entity A, a State N nonprofit corporation, qualify as church plans under section 414(e) of the Internal Revenue Code.

The following facts and representations have been submitted on your behalf:

Entity A was incorporated on September 5, 1997. Entity A has received an Internal Revenue Service determination letter that Entity A is exempt from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3) of the Code. Entity A was created pursuant to the Affiliation Agreement between Entities D, G, H, and J, on October 31, 1997. Entities D, G, H, and J are State N nonprofit, tax-exempt organizations.

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Entity D is the central corporation in a large and diversified integrated care system comprised of hospitals, clinics, and other health care facilities. Entity G owns and operates nursing homes, senior residences, and other related facilities, primarily for the elderly. Entity G was originally incorporated on January 7, 1919, and affiliated with Entity D on April 12, 1995.

Entity E is an unincorporated, tax-exempt organization. Entity E includes two representatives from each of sixty-five congregations of Church K for a total of 130 of such members. The mission statement of Entity E states that its purpose is to "minister to the sick, the helpless and the needy, motivated by the love and example of the Lord Jesus Christ".

Entity D's original three hospital divisions are not separately incorporated, but each has a Board of Trustees with some limited authority over the operations of its division. Trustees of these three divisions are also members of Entity E. There are currently forty-seven of these members. The members of Entity E elect some or all of the trustees of each of these three divisions, and the directors of Entity F, a related nonprofit, tax-exempt provider of physician and related health care services, as specified in the Bylaws of each such organization. The trustees of the three hospital divisions, and the directors of Entity F, in turn, elect a majority of the members of Entity D's corporate Board of Directors. The remaining corporate directors are elected by other affiliated organizations or they are elected at large or are ex-officio. For example, the Board of Trustees of Entity A has the right to elect one director of Entity D's Board of Directors. The members of the Entity D corporate Board of Directors also serve as the corporate members of Entity D under the State N Nonprofit Corporation Act. As members, they have rights analogous to shareholders in a taxable corporation, including the right to approve extraordinary events such as a merger or dissolution, but not the right to receive distributions or an ownership interest in the assets of the corporation. Entity D is listed in Church K's directory of social ministry organizations.

Entity H, a tax-exempt organization, is a diversified health care system which owns and operates hospitals, nursing homes, senior residences, home health agencies, and other related facilities, primarily for the elderly. Entity H was originally incorporated on November 30, 1923.

Entity L is an unincorporated tax-exempt organization of which 55 percent of the elected members are elected by the six State N synods of Church K. All such members must be members of Church K. The other 45 percent of the elected members are elected by Entity L and five-ninths must be members of Church K. The State N Church K bishops are ex-officio members of Entity L. The primary function of Entity L historically has been to elect the Entity H Board of Directors.

Entity B is a State N nonprofit corporation that has received an Internal Revenue Service determination letter that Entity B is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. Entity A is the sole member of Entity B, with the exclusive authority to elect all of Entity B's Board of Directors. Entity C is a State N nonprofit, taxable corporation. Entity I is a State N nonprofit corporation that is exempt from tax under the Group Exemption of Church K. Entity H has the exclusive authority to elect all of Entity I's Board of Directors. Entity I's Amended and Restated Articles of Incorporation state that Entity I is organized and operated to support Entity H and Entity H's tax-exempt subsidiaries, and that Entity I intends to be a social ministry organization affiliated with Church K. Members of Entity I's Board of Directors are appointed and may be removed by Entity H's Board. Amendments to Entity I's Articles and Bylaws and the election of Entity I's officers must be

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approved by Entity H's Board. Upon dissolution, the assets of Entity I will be distributed to Entity H if Entity H is still a tax-exempt organization. If Entity H is not a tax-exempt organization, the assets will be distributed to a social ministry organization affiliated with Church K.

Entity H and Entity G historically have been social ministry organizations formally affiliated with Church K and have operated in accordance with the commitments and requirements established by Church K's Division S (the "Commitments"). Both Entity H and Entity G are listed in Church K's directory of social ministry organizations.

The Commitments for affiliated organizations include commitments to do the following: participate with Church K organizations in addressing human care needs, maintain a distinct Church K identity, maintain open communication and cooperation with all ministry partners, and attain excellence. These commitments are to be demonstrated by, among other things, a consistent mission statement, a declaration of intent to be affiliated with the Church, endorsement by the Church, membership and active participation in Church K Services in America, consistent organizational practice, a Board of Directors with a majority of Church members, and exchange of information with Church bodies.

Entities D, H, G and J previously recognized that their charitable missions and values were compatible and that an affiliation of their respective health care systems would (a) create an expanded social ministry organization better able to serve the health care needs of their communities in an integrated manner, (b) expand the continuum of care offered to their respective communities, and (c) promote their charitable purposes. Accordingly, on October 31, 1997, they entered into an Affiliation Agreement to achieve those purposes (the "Affiliation Agreement").

The closing of the Affiliation Agreement occurred simultaneous with its execution on October 31, 1997. Pursuant to the Affiliation Agreement, Entity A was incorporated with Entity D as its sole corporate member and the Articles of Incorporation and Bylaws of Entity H and Entity G were amended to make Entity A the sole corporate member of those two organizations.

The Affiliation Agreement provides that, at any time during the first two years after the closing, either Entity D or Entity H may elect to dissolve the affiliation and restore the parties to the status quo ante insofar as possible.

Paragraph G of the Recitals to the Affiliation Agreement states as follows: "Entity G and Entity H are social ministry organizations currently affiliated with Church K and intend to continue their affiliations with Church K and to function in accordance with the requirements and interdependent accountabilities established by Division S of Church K from time to time. The Parties appreciate and are proud of their long and close relationships with Church K, Church K's six synods in State N and dozens of Church congregations throughout State N."

Section 1.3 of the Affiliation Agreement contains the following statement concerning continued Church K affiliation: "On or before the Closing Date, the Parties shall file a request for Entity A's affiliation with Church K as a social ministry organization. From and after the Closing Date, Entity G and Entity H shall continue to be organized and operated as social ministry organizations affiliated with Church K. The Parties do not intend for the affiliation to have any adverse impact on any Party's status as a social ministry organization affiliated with Church K."

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Church K has provided a letter to Entity H that the Affiliation Agreement will not adversely affect its continued affiliation with Church K. Church K has also provided a letter to Entities A, B and G that those entities remain affiliated with Church K after the Affiliation Agreement.

Section 1.3 of the Affiliation Agreement contains the following statement concerning the organizations' historical relationship with Church K: "This affiliation involves organizations that were born out of a Church K heritage. The parties appreciate and are proud of their long and close relationships with Church K and local Church K congregations".

In Entity A's Amended and Restated Articles of Incorporation, Article II states that Entity A has been organized primarily to operate nursing homes, senior housing and other related facilities, and to provide related services to the elderly. Article II also includes the following statement: "This corporation intends to be affiliated with Church K and to function in accordance with the requirements and interdependent accountabilities established by Division S of Church K from time to time." Article IX states that Entity D will be the sole corporate member. Article X states that, upon dissolution, Entity A's assets will be distributed to Entity D if Entity D is still a tax-exempt corporation. If Entity D is then not a tax-exempt corporation, the assets will be distributed to a social ministry organization affiliated with Church K.

Entity A's Bylaws at section 3.02 states that the Board will have 15 or 17 trustees, 12 or 14 of whom will be elected, and three of whom will be ex-officio. The three ex-officio trustees are its Chief Executive Officer, its President, and member of Entity D's Board of Directors. Section 4 of the Affiliation Agreement states that Entity A's Chief Executive Officer and President will both be employed by Entity D. Section 3.03 states that at all times a majority of the Board will consist of members in good standing of congregations of Church K. Section 3.03 also states that one-half of the elected trustees will be elected by Entity E, and one-half will be elected by Entity L.

Section 4.02 of Entity A's Bylaws provides that the Entity A Board and D's Chief Executive Officer must mutually agree upon the selection of Entity A's Chief Executive Officer and President, and that those officers may be removed by the Board or Entity D's Chief Executive Officer after consultation between them. Section 4.03 of the Bylaws states that Entity A's Chief Executive Officer will report to, and be supervised by, both Entity A's Board and Entity D's Chief Executive Officer.

Section 5.04 of Entity A's Bylaws describes the functions and composition of Pension Committee A. It states that Pension Committee A will be responsible for administering Entity A's employee benefit plans. It also provides that Pension Committee A will consist of five members who are officers and/or trustees of Entity A and who are members of Church K congregations. Subject to these qualifications, Entity A's Board of Trustees will elect all members of Pension Committee A. The principal function of Pension Committee A is the administration of Entity A's Plans.

Article X of Entity A's Bylaws reserves to Entity D the right to approve, in advance, the following actions by Entity A: (1) amendments to its Articles of Incorporation and Bylaws, (2) capital budgets and major capital expenditures, (3) operating budgets, (4) strategic plans, (5) incurrence of long-term debt, (6) human resources and benefits policies, (7) major risk contracting agreements, (8) any merger, consolidation, or dissolution, (9) the number of trustees, and (10) similar actions by corporations controlled by Entity A. However, Article VIII of the Bylaws also states that amendments to certain provisions in Entity A's Articles of Incorporation and Bylaws must be

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submitted to Church K's Division for Church in Society for review prior to approval.

The primary purpose of Entity G is to provide service to the elderly in a manner which emphasizes Christian care and concern. Article II of its Articles of Incorporation states that Entity G intends to affiliate with Church K and function in accordance with the Commitments. Article VIII states that Entity A will be the sole corporate member of Entity G, but that if the affiliation is dissolved in the first two years after the closing, Entity D shall again become the sole corporate member. Article IX provides that Entity G will affiliate with congregations of Church K and that each affiliated congregation will designate a person to act as a liaison between his or her congregation and Entity G, to communicate to Entity G the needs of senior members of the congregation, and to communicate to the congregation information regarding programs, benefits, and services available from Entity G. Article X states that, on dissolution, Entity G's assets will be distributed to Entity A if Entity A is then tax-exempt, or to social ministry organizations affiliated with Church K if Entity A is not then tax-exempt.

Article III of Entity G's Bylaws, as amended and restated pursuant to the Affiliation Agreement, provides that the Board will consist of between 7 and 17 directors, all of whom will be elected, except for two ex-officio directors who will be Entity G's President and an appointee of Entity D's Board of Directors. Section 3.03 states that a majority of the Board will at all times consist of members in good standing of the affiliated Church K congregations, and that Entity D has the right to elect all of the elected directors until October 31, 1999. Beginning on that date, provided the affiliation has not been dissolved, Entity A will appoint all of the elected directors. The directors are to be elected from nominees nominated by the Entity A Nominating Committee.

Section 4.02 of the Bylaws of Entity G states that the Board and Entity D's Chief Executive Officer must agree on the selection and appointment of Entity G's President and that the President may be removed by either the Board or Entity D's Chief Executive Officer after consultation between them.

Although Section 5.05 of the Bylaws of Entity G authorizes the appointment of a Pension Committee, none will be appointed because Entity G's employees will be covered by benefit plans administered by Pension Committee A.

Article X of the Bylaws of Entity G reserves to Entity A the same approval powers reserved to Entity D in the Entity A Bylaws. However, with respect to certain amendments to Entity G's Articles of Incorporation or Bylaws, Article VIII states that such amendments must be submitted to the Church K Division for Church in Society for review prior to approval.

The Articles of Incorporation of Entity H, as amended and restated pursuant to the Affiliation Agreement, states that the general purpose of Entity H is to provide services to the elderly in a manner "which emphasizes Christian care and concern". Article II also states that Entity H intends to be affiliated with Church K and to function in accordance with the Commitments. Article VIII states that Entity A will be the sole member of Entity H, except that if the affiliation is dissolved prior to October 31, 1999, then the members of Entity L will become the members of Entity H. Article IX states that, on dissolution, the assets of Entity H shall be distributed to Entity A if Entity A is then tax-exempt, or to social ministry organizations affiliated with Church K, if Entity A is then not tax-exempt.

The Bylaws of Entity H, as amended and restated pursuant to the Affiliation Agreement, state that the Board of Directors of Entity H will

consist of between seven and 13 directors, all of whom will be elected, except for one ex-officio director, who will be a member of Entity A's Board of Trustees and designated by Entity A. Section 3.03 states that a majority of the Board of Directors of Entity H will consist of members of Church K congregations. Section 3.03 also states that, until October 31, 1999, Entity L will elect all of the directors other than the ex-officio director. The directors will be selected from a slate proposed by the Entity A Nominating Committee. If the affiliation is not dissolved prior to October 31, 1999, Entity A will replace Entity L in electing the directors.

Section 4.02 of the Bylaws of Entity H states that the Board of Directors of Entity H and Entity D's Chief Executive Officer must mutually agree upon the appointment of the President. Section 4.02 also states that either the Board of Directors of Entity H or Entity D's Chief Executive Officer may remove the President after consultation between them.

Although Section 5.04 of the Bylaws of Entity H authorizes the appointment of a Pension Committee, none will be appointed because Entity H's employees will be covered by benefit plans administered by Pension Committee A.

Article X of the Bylaws of Entity H reserves to Entity A the same approval powers as are reserved to Entity D in the Entity A Bylaws. However, Article VIII requires that certain amendments to the Articles of Incorporation and Bylaws must be submitted for review by Church K's Division for Church in Society prior to approval.

Plan X which is sponsored by Entity A, is a retirement plan which meets the qualification requirements of section 401(a) of the Code, and is maintained for the benefit of employees of Entities A, H, G, and I.

Plan Y, which is sponsored by Entity A, is a tax-sheltered arrangement which is intended to meet the requirements of section 403(b) of the Code and is maintained for the benefit of employees of Entities A, H, G, and I.

Plans W and Z were amended effective September 16, 1999, to change the plan sponsor to Entity A and to change the plan administrator to Pension Committee A. Plans W and Z benefit certain union employees of Entity G who are all employed at a single facility. There are currently 47 participants in Plans W and Z.

Plan W is designed to qualify as a tax-sheltered arrangement under section 403(b) of the Code. Plan Z is qualified under section 401(a).

The Welfare Plans which are sponsored by Entity A, are maintained for the benefit of employees of Entities A, H, G, I, B and C. Entities A, G and H each have a number of other tax-exempt and one taxable subsidiary which participate in some of the Welfare Plans. Such participants of Entity C, the taxable subsidiary, are 3.7 percent of all participants in the Welfare Plans and their compensation is approximately 3.7 percent of the total.

Based on the aforementioned facts and representations, your authorized representative requests a ruling that Plans X, Y, Z, W, and the Welfare Plans qualify as church plans under section 414(e) of the Code.

Section 414(e)(1) of the Code defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from taxation under section 501 of the Code.

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Section 414(e) (2) of the Code provides that the term "church plan" does not include a plan (A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or (B) if less than substantially all of the individuals included in the plan are church employees (as described in section 414(e) (1) or 414(e) (3) (B)).

Section 414(e) (3) (A) of the Code provides that a plan, otherwise qualified, will qualify as a church plan if it is maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Section 414(e) (3) (B) of the Code defines "employee" to include a duly ordained, commissioned, or licensed minister of a church in the exercise of a ministry, regardless of the source of his or her compensation, and an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e) (3) (C) of the Code provides that a church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e) (3) (D) of the Code provides that an organization, whether a civil law corporation or otherwise, is "associated" with a church or convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization to have a qualified church plan it must establish that its employees are employees or deemed employees of the church or convention or association of churches under section 414(e) (3) (B) of the Code by virtue of the organization's affiliation with the church or convention or association of churches and that the plan will be administered by an organization of the type described in section 414(e) (3) (A).

You have represented that Entity A's Bylaws state that a majority of its Board of Trustees must at all times be members in good standing of Church K congregations, and that certain amendments to the Articles of Incorporation or Bylaws must be submitted to the Church K Division for Church in Society for review prior to approval, that Entity A has been formed to be the sole corporate member of Entity G and Entity H, and those two organizations have been formally affiliated with Church K for many years and operated in accordance with the Commitments.

Further, you represent that Entities A, B, G and H have received written confirmation that they are affiliated with Church K and meet the requirements contained in the Commitments for social ministry organizations after the Affiliation Agreement. In addition, you represent that in the Affiliation Agreement, the parties recognized the importance of their Church K heritage and their intention to continue their affiliation with Church K in the future, and that the Articles of Incorporation of Entities A, G and H all state that they intend to be affiliated with Church K and to function in accordance with the Commitments, and that their assets will be distributed to a social ministry organization affiliated with Church K on dissolution if their corporate members are not then tax-exempt.

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Finally, you represent that Entities G and H are also affiliated with Church K. The Articles of Incorporation of both Entities G and H state that their purpose is to provide services to the elderly in a manner which emphasizes Christian care and concern, and also state an intention to be affiliated with Church K and to function in accordance with the Commitments. The Articles of Incorporation of both Entities G and H also state that, on dissolution, the corporation's assets will be distributed to Entity A if it is then tax-exempt, or to social ministry organizations affiliated with Church K if it is not then tax-exempt. Entities G and H are also listed in Church K's directory of social ministry organizations, and Church K has confirmed that their recent affiliation will not affect that listing. At all times, a majority of both Boards will consist of members in good standing of Church K congregations.

Because Entities A and H are affiliated with Church K, the tax-exempt subsidiaries, Entities B and I, for which Entities A and H, respectively, have the right to elect all of the directors, are also affiliated with Church K.

The governing documents of each of the Entities covered by Plans X, Y, Z, W and the Welfare Plans assure adherence to the teachings and philosophies of Church K. In addition, Entity A's Bylaws state that a majority of the Board of Trustees must at all times be members in good standing of Church K congregations. Consequently, these Entities are associated with a church or convention or association of churches, within the meaning of section 414(e) of the Code. Therefore, the employees of each Entity covered by Plans X, Y, Z, W and the Welfare Plans that is exempt from tax under section 501(a) of the Code, under the principles of section 414(e)(3)(B) of the Code, are deemed to be employees of a church or a convention or association of churches.

Furthermore, based on the facts you submitted concerning the employees of Entity C, substantially all of the individuals included in the Welfare Plans are considered to be church employees.

However, an organization must also establish that its retirement and welfare plans are established and maintained by a church or a convention or association of churches. Since Entity A is not in itself a church, Plans X, Y, Z, W and the Welfare Plans must be maintained either by Church K or by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the administration of the plan and must also be controlled by or associated with a church or convention or association of churches.

It has been submitted that Plans X, Y, Z, W, and the Welfare Plans are managed and controlled by Pension Committee A, which is comprised of five members who are elected by Entity A's Board of Trustees. The principal function of Pension Committee A is the administration of Plans X, Y, Z, W, and the Welfare Plans. As such, Pension Committee A is an organization described in section 414(e)(3)(A) of the Code.

Therefore, we conclude that Plan X, Plan Y, Plan Z, Plan W, and the Welfare Plans each are a "church plan" within the meaning of section 414(e) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This letter expresses no opinion as to whether Plans X and Z satisfy the requirements for qualification under section 401(a) of the Code. The determination as to whether a plan is qualified under section 401(a) is within

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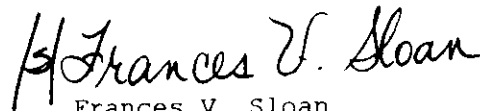
the jurisdiction of the appropriate Key District Director's Office of the Internal Revenue Service.

This ruling expresses no opinion as to whether Plans Y and W satisfy the requirements for tax-sheltered arrangements under section 403(b) of the Code.

We are not ruling directly or indirectly, on whether any of the Welfare Plans constitute a cafeteria plan within the meaning of section 125 of the Code or on whether amounts allocable to the benefits under any of the Welfare Plans are constructively received or nontaxable. Therefore, this ruling shall not be construed as approving any of the Plans referred to herein under section 125 or any other provision of the Code except section 414(e).

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,



Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:

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Notice of Intention to Disclose

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